BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI

CITY OF POPLAR BLUFF, Petitioner, v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 2, AFL-CIO, Respondent, v. JIMMY WRINKLE, et al., Intervenors.	)	Public Case No. UC 90-030

JURISDICTIONAL STATEMENT

This case appears before the State Board of Mediation upon the filing of a unit clarification petition by the City of Poplar Bluff seeking to modify the existing bargaining units in the City's Utility Department represented by IUOE, Local 2 and the Intervenors' petition to create a separate bargaining unit for Electric Distribution Division employees. A pre-hearing conference was held on July 12, 1990 in Poplar Bluff, Missouri. A hearing was held on September 11, 1990 in Clayton, Missouri, at which representatives of the City, IUOE, Local 2 and the Intervenors were present. The case was heard by State Board of Mediation Chairman Mary L. Gant, employer member Pamela S. Wright, and employee member David L. Langston. At the hearing, the parties were given full opportunity to present evidence. The Board, after a careful review of the evidence, sets forth the following findings of fact and conclusions of law.

FINDINGS OF FACT

The City of Poplar Bluff (hereinafter referred to as the City) maintains a Utility Department to service its electric, water, and sewer utilities. This department consists of

three divisions: Electric Distribution, Water Distribution/Sewer Collection, and Plant, Maintenance and Office. Each division performs a function that is different from the others. Employees from these divisions are not interchangeable or cross-trained. Each of these divisions has a separate supervisor, with the Plant, Maintenance and Office Division having two supervisors, one for plant maintenance and one for the office. These four supervisors report to the utility manager.

The Electric Distribution Division is responsible for keeping the electric power lines operating. This division consists of linemen, tree trimmers, stock clerks, and a serviceman. These employees primarily work outdoors. The linemen maintain and repair high voltage power lines, transformers, and substations. This is the most technical and highest paid non-supervisory position in the Utility Department. Linemen serve a four year apprenticeship before becoming a journeyman lineman. Linemen are on-call 24 hours a day and work more hours than anyone else in the Utility Department because of their emergency overtime responsibilities whenever there is a power outage. Linemen are the only Utility Department employees that periodically receive additional training. Tree trimmers trim around power lines, but do not work on the lines as do the linemen.

The Water Distribution/Sewer Collection Division is responsible for keeping the water and sewer lines operating and in good repair. This involves outside construction-type work such as repairing water leaks and digging up and replacing water and sewer lines. This division consists primarily of laborers, machine operators, meter readers, a stock clerk and a serviceman. These employees primarily work outdoors. They are sometimes involved in emergency overtime.

The Plant, Maintenance and Office Division has two separate functions: the plant maintenance part operates the water, sewer, and electric plant operations while the office unit performs clerical/billing/collection work for all three divisions. The plant maintenance part of the division consists of mechanics, maintenance employees, and

water, sewer and electric plant operators while the office part of the division consists primarily of cashiers and clerks. These employees all work indoors. They are seldom involved in emergency overtime.

The City voluntarily recognized International Union of Operating Engineers, Local 2, as bargaining representative for utility department employees in 1968. From then until 1978, the parties included all utility employees in one bargaining unit covered by a single labor agreement. In 1978, the parties divided the utility employees into two separate bargaining units covered by two different contracts: one is known as the "electric" contract and the other is known as the "water-sewer" contract. The composition of these two bargaining units has not changed since 1978, except for the inclusion of office employees in the "electric" bargaining unit in 1983. The current (i.e. 1990-92) "electric" contract covers those employees in the Electric Distribution Division as well as those employees in the Plant, Maintenance and Office Division who work in the power generating plant, maintenance, bookkeeping and cashier positions. The current (i.e. 1990-92) "water-sewer" contract covers those employees in the Water Distribution/Sewer Collection Division as well as those employees in the Plant, Maintenance and Office Division who work in water and sewer treatment. About 60 employees are included in these two bargaining units.

Over the years, the make-up of the existing bargaining units has been a source of contention between the parties, especially for the linemen. In contract negotiations in 1989, the City proposed amending the make-up of the bargaining units from two to three so as to coincide with the three divisions of the Utility Department. The Union opposed the proposal. The parties eventually agreed to two 1990-92 contracts for the existing two bargaining units with both including the following addendum:

> With regard to the City's proposal to separate the bargaining units in three groups (electric distribution personnel, water distribution personnel, and plant and office personnel), it is agreed between the parties to abide by the State Board of Mediation's ruling on this issue.

On May 14, 1990, the City filed a unit clarification petition with the Board seeking to modify the composition of bargaining units in the Utility Department. On May 29, 1990, all 19 Electric Distribution Division employees intervened in the matter contending the Electric Distribution Division should be made into a separate bargaining unit. Neither the City nor the Intervenors seek to remove IUOE, Local 2 as bargaining representative from any bargaining unit.

CONCLUSIONS OF LAW

The Board has viewed the City's petition as being a petition for unit clarification, not a petition for a representation election. In unit clarification proceedings, there is no requirement that a petition be filed at any particular time. Thus, the labor agreements presently in existence between the Union and the City do not bar this proceeding. Moreover, lest there be any question about our right to entertain this petition, it is expressly noted that the parties stipulated at the pre-hearing conference that this Board is empowered to resolve the issues raised herein.

The City has petitioned this Board to change the composition of the two existing voluntarily recognized bargaining units in the Utility Department. Specifically, it proposes that rather than the existing units known as electric and water-sewer, there should be three units in the Utility Department corresponding with divisional lines, namely the Electric Distribution Division, the Water and Sewer Division, and the Plant, Maintenance and Office Division. The Intervenors agree with the City's position that the Electric Distribution Division employees lack a community of interest with the present electric bargaining unit and also propose that an Electric Distribution Division unit be created; they take no position though on the other two units the City is proposing. The Union opposes changing the existing two units in the Utility Department.

This Board is charged with deciding issues concerning appropriate bargaining units by virtue of Section 105.525 RSMo 1986 wherein it provides: "Issues with respect

to appropriateness of bargaining units and majority representative status shall be resolved by the State Board of Mediation." An appropriate bargaining unit is defined in Section 105.500(1) RSMo 1986 as:

> A unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

Missouri statutory law does not provide further guidelines for determining what constitutes a "clear and identifiable community of interest" nor does it set out any criteria as to the means to be used by the Board in resolving such issues. However, the Board has consistently looked to a number of factors in determining whether employees have a community of interest. Those factors, as set forth in AFSCME, Missouri State Council 72 v. Department of Corrections and Human Services, Case No. 83-002 (SBM 1984), and other cases, include:

1. Similarity in scale or manner of determining earnings.
2. Similarity in employment benefits, hours or work and other terms and conditions of employment.
3. Similarity in the kind of work performed.
4. Similarity in the qualifications, skills, and training of employees.
5. Frequency of contact or interchange among the employees.
6. Geographic proximity.
7. Continuity or integration of production processes.
8. Common supervision and determination of labor-relations policy.
9. Relationship to the administrative organization of the employer.
10. History of collective bargaining.
11. Extent of union organization.

In our view, one of the above-noted factors is of critical importance in the disposition of the instant matter, namely number 10 (i.e., history of collective

bargaining). Accordingly, we begin our analysis with a review of the historical context. The City voluntarily recognized the Union as bargaining representative for utility employees in 1968. At that time, the parties decided that one bargaining unit for all utility employees was adequate even though there were three divisions in the department. Ten years later (1978), the parties created two departmental bargaining units: electric and water-sewer; employees in the Electric Distribution Division were placed in the electric bargaining unit, employees in the Water-Sewer Division were placed in the water-sewer bargaining unit and employees in the Plant, Maintenance and Office Division were split between these two units. These two bargaining units have remained essentially unchanged since that time.

When the parties began a bargaining relationship for the utility employees in 1968, they no doubt considered the make-up of the bargaining unit(s) being created. Specifically, they could have opted for a variety of bargaining unit(s) for Utility Department employees ranging from one to several. They originally chose one unit in 1968 and later changed to two units in 1978. In deciding that these employee groupings were workable, they were certainly aware that no matter what unit(s) were decided upon, there would be competing interests among employee groups since that is an inevitable consequence of putting employees with different jobs into the same unit. This is true of the parties original decision (in 1968) to put all the employees in one overall utility unit as well as their decision (in 1978) to split employees from the three utility divisions into two units: electric and water-sewer.

The foregoing record demonstrates that municipal employers and unions are free to address and decide the composition of their own bargaining unit(s) without the involvement of this Board. This Board though frequently addresses those same issues when the parties cannot agree on a unit's composition. Normally, when this Board is confronted with questions concerning the composition of a bargaining unit, it occurs before a bargaining relationship has commenced. Obviously, when this happens, there

is no bargaining relationship to consider in deciding the composition of the unit and our decision is based on the other factors noted above. Here, though, the parties have a 22 year bargaining relationship that cannot be overlooked. Said another way, we cannot decide the instant matter in a vacuum independent of this relationship and the labor agreements that already exist. Were it not for the existence of this long term bargaining relationship, it may well be that this Board would not have chosen the make-up of bargaining units in the Utility Department that presently exist. Be that as it may, this Board is not in the business of undoing the work of municipal employers and unions concerning voluntarily recognized units, and specifically their unit determinations, unless we are confronted with a patently inappropriate unit such as one wherein supervisors are included in the same unit as the employees they supervise. Here, the existing two Utility Department bargaining units are not inappropriate on their face.

Having so found, we now turn to the question of whether we will redraw the bargaining unit lines from two to three to correspond with divisional lines in the Utility Department (as proposed by the City) or whether to sever the Electric Distribution Division from the existing electric unit (as proposed by the Intervenors). We decline to do either based on the following rationale.

Attention is focused first on the City's proposal. The crux of the City's contention is that their proposal to create three bargaining units would provide a better community of interest among the employees than currently exist. In theory, we do not disagree. However, even if the existing two units are not the most appropriate units or the best units of utility employees that could be envisioned, there is no requirement that they be. Rather all that is required is that a unit be an appropriate unit. IBEW, Local 257 v. Curators of the University of Missouri, d/b/a KOMU-TV, Case No. 86-013 (SBM 1986). In our view, the existing two units in the Utility Department meet this requirement. That being the case, there is no legal reason to disturb their existence.

While the City suggests that it now finds itself in a situation where employees in the Utility Department are grouped with others with whom they do not share a community of interest, we believe this situation is entirely of the City's own making when it created the original and present bargaining units in 1968 and 1978. Had it wanted three bargaining units drawn along divisional lines, it could have created or negotiated same. It did not. Furthermore, there have not been any changes in the Utility Department's overall structure since these agreements were made that would warrant changing the units. There were three divisions in 1968 and still are today. All that has changed is that the City has now decided it can no longer live with what it negotiated in 1978 (i.e., two bargaining units in the Utility Department). However, since it has done just that for 12 years, it is hard pressed to show why we should change it over the Union's objection. Under these circumstances, we decline to rescue the City from itself.

Attention is now turned to the Intervenor's proposal to sever the Electric Distribution Division from the existing electric unit. Their primary argument in this regard is that the employees in the Electric Distribution Division lack a community of interest with other employees in the electric bargaining unit.

We believe it is apparent from the record that the non-linemen in the Electric Distribution Division have skills and duties that are similar to those exercised by other employees in the electric bargaining unit; consequently there is a community of interest between the non-linemen in the Electric Distribution Division and the other employees in the existing electric unit. The linemen though have training, skills, and duties that are different from the other employees in the electric bargaining unit or, for that matter, anyone in the Utility Department. Specifically, the linemen give every indication of being craft employees in that all are either of journeyman status or are going through an apprenticeship program. In contrast though, all the other employees covered by the

electric contract in either the Electric Distribution Division or the Plant, Maintenance and Office Division appear to be non-craft employees.

However, even if the linemen are craft employees, this does not mean they are automatically entitled to their own separate unit. This is because there is nothing in the Public Sector Labor Law that precludes craft employees from being included in a bargaining unit with non-craft employees. See Sheet Metal Workers, Local 2 v. Central Missouri State University, Case No. 83-001 (SBM 1983) and Independence Power and Light Employee Relations Committee v. Independence Power & Light Company, Case No. 78-024 (SBM 1982). Accordingly then, craft employees can either be included in a unit with non-craft employees or given their own unit.

Here, the parties themselves addressed this question in 1968 and decided to include the linemen with the non-linemen. Such was their right. Given the length of time this arrangement has continued unchanged (i.e. 22 years), we are not inclined to disturb it. In our view, it would be detrimental to the stability of the parties existing relationship to make such a fundamental change in the unit's overall composition.

Were the parties just commencing their bargaining relationship, it may well be that we would not have included the linemen with the non-linemen or created the existing electric unit. However, the fact of the matter is that the parties are not starting an initial relationship, but, instead, are well into a mature bargaining relationship. Under these circumstances then, we decline to modify the composition of the existing electric unit to create an Electric Distribution Division unit as proposed by both the City and the Intervenors. While the existing electric unit is certainly not the most appropriate unit that could be envisioned, it is, as previously noted, an appropriate unit. Moreover, the unit proposed by the Intervenors of all Electric Distribution Division employees is only slightly better. Said another way, the Intervenors proposed unit of linemen and non-linemen is no less a hybrid mixture of positions than that which currently exists in the electric bargaining unit.

In so finding, we are well aware that the linemen want their own unit. Be that as it may, their individual wishes are not controlling here.

Finally, we are not persuaded that there is any concrete evidence that the special interests of either linemen or Electric Distribution Division employees as a whole have been subverted by the existing electric unit. That being so, it is our assumption that the interests of the employees in the Electric Distribution Division can continue to be served by the existing electric unit.

In summary, we conclude that, on balance, the parties' mature bargaining relationship favors maintaining the existing two utility units and outweighs those evidential factors which point to the uniqueness of the employees in the Electric Distribution Division, particularly the linemen. Accordingly, the Board declines to modify the composition of the bargaining units that presently exist in the Utility Department. Of course, the parties are free to make the sought-after changes on their own should they so desire.

DECISION

It is the decision of the State Board of Mediation that the existing two voluntarily recognized units in the City's Utility Department are appropriate bargaining units. Inasmuch as these two units have existed essentially unchanged since 1978, we have declined to either replace them with three units corresponding with divisional lines (as proposed by the City) or to carve out the Electric Distribution Division from the existing electric unit (as proposed by the Intervenors). Accordingly, both petitions are hereby dismissed.

Signed this 4th day of December, 1990.

STATE BOARD OF MEDIATION

(S E A L)

/s/ Mary L. Gant
Mary L. Gant, Chairman

/s/ David Langston
David Langston, Employee Member

/s/ Pamela S. Wright
Pamela S. Wright, Employer Member